

### **REMARKS**

Claims 1-3, 6-34, and 36-46 are presently pending in the case. Claims 4, 5, and 35 have been cancelled without prejudice or disclaimer, Applicant reserving the right to pursue the claims in a continuing application. Claims 1, 6-8, 20-22, 31, and 36 have been amended, without prejudice, Applicant reserving the right to pursue the previously presented claims in a continuing application. The amendments are supported by the specification as originally filed.

Reconsideration of the present case in view of the amendments and remarks herein is requested.

#### **Claim rejections under 35 USC 102**

The Examiner rejected claims 1-8 and 19-24 under 35 USC 102(b) as being anticipated by U.S. Patent 5,753,302 to Sun et al (hereinafter Sun et al). The rejection is traversed.

Sun et al does not anticipate claims 1-8 and 19-24. To sustain a section 102 rejection, the reference relied upon, must disclose each and every element of the claimed invention. Non-disclosure of a single element of the claim negates anticipation. Claim 1, for example, is to an apparatus for filling a chamber, the apparatus comprising a hopper adapted to contain a powder pharmaceutical formulation, the hopper comprising an outlet; and a vibratable membrane capable of disturbing a medium within the hopper, the disturbance of the medium being sufficient to control the flow of powder through the outlet, whereby the chamber may be filled by powder flowing through the outlet and into the chamber. Sun et al does not disclose all that is recited in claim 1. Sun et al describes a dispenser for propelling objects towards a substrate. The objects are propelled from a membrane to the substrate. Thus, Sun et al does not disclose an outlet through which powder flows in a controlled manner. It is respectfully submitted that these positively recited features are absent in the teachings of Sun et al, thereby precluding a section 102 rejection. Thus, the Examiner is respectfully requested to reconsider the language of claim 1 and withdraw the rejection thereunder.

Sun et al also does not anticipate claim 22. Claim 22 recites, inter alia, a vibratable member positioned in, on, or near a hopper so that the vibratable member is spaced

from powder in the hopper when the vibratable member is not vibrating and when the hopper contains powder, the vibratable member being capable of fluidizing the powder in the hopper. Sun et al's vibratable member is for propelling. As can be seen in Figure 2 of Sun et al, the powder rests on the vibratable member and is then propelled towards a substrate for the purpose of coating the substrate. Thus, Sun et al does not disclose a system where the vibratable member does not contact powder in the hopper when the vibratable member is not vibrating, as recited in claim 22.

The Examiner rejected claims 1, 9-13, 15-18, 22, 25-34, 38-42 and 46 under 35 USC 102(b) as being anticipated by U.S. Patent 5,826,633 to Parks et al (hereinafter Parks et al). The rejection is traversed.

Parks et al does not anticipate the claims. Claim 1, for example, is to an apparatus for filling a chamber, the apparatus comprising, inter alia, a vibratable membrane capable of disturbing a medium within the hopper, the disturbance of the medium being sufficient to control the flow of powder. Parks et al, on the other hand, discloses the use of mechanical agitation that contacts a powder to fluidize the powder rather than fluidizing the powder by disturbing a medium. Accordingly, Park et al does not anticipate claim 1. Independent claim 22 recites, inter alia, "a vibratable member positioned in, on, or near the hopper so that the vibratable member is spaced from powder in the hopper when the vibratable member is not vibrating, the vibratable member being capable of fluidizing the powder in the hopper." Independent claim 31 recites the step of "disturbing a medium in the hopper to fluidize the powder" and independent claim 42 recites the step of "vibrating a member spaced from the powder to fluidize the powder". Accordingly, claims 22, 31, and 42 are not anticipated by Parks et al.

Claims 2, 3, 6-21 depend from claim 1; claims 23-30 depend from claim 22; claims 32-34 and 35-41 depend from claim 31; and claims 43-46 depend from claim 42. These dependent claims are not anticipated by Sun et al or Parks et al for at least the same reasons as the claim from which they depend.

#### **Claim rejections under 35 USC 103(a)**

The Examiner rejected claim 14 under 35 USC 103(a) as being unpatentable over Parks et al. The rejection is traversed. Claim 14 depends from claim 1. Claim 1 is allowable

over Parks et al as discussed above. Therefore, claim 14 is also allowable over Parks et al.  
Applicant requests withdrawal of the rejection.

### Conclusion

The Examiner is respectfully requested to reconsider the present case and allow the presently pending claims. Should the Examiner have any questions, the Examiner is requested to call the undersigned at the number given below.

Respectfully submitted,

NEKTAR THERAPEUTICS  
(formerly INHALE THERAPEUTIC  
SYSTEMS)

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By: 

Guy V. Tucker  
Reg. No. 45,302

Please send all correspondence to:  
Guy Tucker  
Nektar Therapeutics  
(formerly Inhale Therapeutic Systems, Inc.)  
150 Industrial Road  
San Carlos, CA 94070  
Phone: (650) 620-5501  
Fax: (650) 631-3125